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J.R.A. DOCKET ROOM

August 23, 2004

Hon. Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: BellSouth's Statement of Generally Available Terms and Conditions
Docket No. 04-00261

Dear Chairman Miller.

Enclosed please find the original and fourteen (14) copies of Motion of CompSouth to Deny BellSouth's Request to Withdraw Statement of Generally Available Terms and Conditions.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By

Henry Walker

HW/krq

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**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

August 23, 2004

<i>IN RE: BELL SOUTH'S STATEMENT OF</i>) <i>Docket No. 04-00261</i>
<i>GENERALLY AVAILABLE TERMS AND</i>)
<i>CONDITIONS</i>)
)

**MOTION OF COMPSOUTH TO DENY BELL SOUTH'S REQUEST TO WITHDRAW
STATEMENT OF GENERALLY AVAILABLE TERMS AND CONDITIONS**

The Competitive Carriers of the South, Inc. ("CompSouth")¹ respectfully requests that the Tennessee Regulatory Authority ("TRA") deny BellSouth Telecommunications, Inc.'s ("BellSouth") request to withdraw its Statement of Generally Available Terms ("SGAT") and conduct an investigation into what changes need to be made to that SGAT as a result of the anticipated changes in federal rules. In support of this Motion, CompSouth states as follows

1 By letter dated August 17, 2004, BellSouth advised the TRA that it intended to withdraw its SGAT offering of interconnection services in Tennessee. In its August 17th letter, BellSouth asserts that "[t]his action is being taken in response to the mandate issued by the United States Court of Appeals for the District of Columbia effectuating its Opinion released on March 2, 2004. By virtue of this mandate, as of June 16, 2004, certain unbundling rules adopted by the FCC in its Triennial Review Order on October 2, 2003, are vacated. In addition, and as a result of the Court's mandate, the FCC has indicated that it expects to issue permanent rules by the end of the year. As such, the SGAT is not compliant with current law "

¹ CompSouth's competitive local exchange carriers doing business in the Southeast include ITC^ DeltaCom, MCI, Access Point Inc , AT&T, NuVox Communications, Inc , Access Integrated Networks, Inc , Birch Telecom, Talk America, Z-Tel Communications, Network Telephone Corp , Momentum Telecom, Inc , Covad, KMC Telecom, IDS Telcom, LLC, Xspedius Communications, InLine, and LecStar Telecom, Inc National association members include CompTel/ASCENT and Promoting Active Competition Everywhere (PACE)

2. As the TRA is well aware, at the time of its application to this agency for approval to enter the long distance market under Section 271 of the federal Act, BellSouth relied on the fact that it had an approved SGAT on file with the TRA, from which CLECs could obtain interconnection services, as well as the fact that it had entered into interconnection agreements with CLECs in Tennessee. In reliance on the SGAT, BellSouth claimed that it had irrevocably opened its network to competitors and had complied with the competitive checklist contained in Section 271 of the federal Act. The TRA and the FCC relied on the existence of the SGAT in approving BellSouth's application for Section 271 authority. Therefore, the existence of BellSouth's SGAT in Tennessee formed at least part of the foundation for the grant of its Section 271 authority and BellSouth should not be permitted to unilaterally withdraw the SGAT on which that authority was granted, without concomitant consequences.

3. The vacatur of the FCC's Triennial Review Order does not, as BellSouth suggests, warrant the elimination of its obligations presently contained in its SGAT. The vacatur impacted only (and perhaps temporarily) BellSouth's obligation to provide a specific set of unbundled network elements pursuant to FCC Rules adopted under section 251 which were vacated by the United States Court of Appeals for the District of Columbia in its *USTA II*² decision. As BellSouth's letter indicates, the FCC has begun a process to put in place replacement rules by the end of the year. Furthermore, notwithstanding this temporary void in FCC Rules prescribing the unbundled network elements that CLECs would be impaired if denied access, Section 251 of the federal Act contains broad unbundling obligations for BellSouth, and the *USTA II* decision did not "vacate" that federal statute.

² *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004)

4. Moreover, BellSouth has a separate independent obligation to offer unbundled network elements under section 271 of the Act. *USTA II* affected *none* of BellSouth's obligations under that section. Consequently, even those unbundled network elements that may have been affected by the *USTA II* vacatur of the Triennial Review Order may not be withdrawn from the market until the TRA determines exactly how BellSouth will continue to meet its obligations under the competitive checklist of Section 271 elements.

5. Given the critical importance of this issue, CompSouth asks that the TRA disapprove BellSouth's request to withdraw its SGAT. The issues raised by this request may impact the future of competition in Tennessee and, as such, the TRA should fully investigate the implications of this request, including whether BellSouth's proposal to discontinue this offering is consistent with Tennessee law.³

CONCLUSION

In Docket No. 04-00158, *Petition of XO Tennessee, Inc. for Declaratory Ruling Requiring BellSouth Telecommunications, Inc. to Honor Existing Interconnection Agreements*, BellSouth filed a letter, dated June 22, 2004, in which it committed that it would not unilaterally implement changes to its interconnection agreements with CLECs, but would instead follow the orderly process contained in those agreements to amend the agreements to affect any "change in law." As CompSouth noted in its Petition to Intervene in that docket, there are likely to be disputes between the parties that will need to be resolved by the TRA as to what "change in law"

³ Section 252(f)(2) expressly authorizes state commissions to establish and/or enforce other state law requirements in an SGAT review, limited only by section 253's prohibition on barriers to entry.

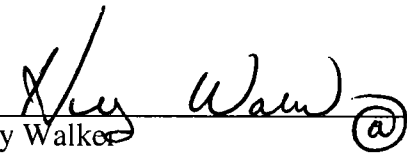
Except as provided in section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

has occurred and how the interconnection agreements should be changed to reflect such changes in law. Once the FCC issues its new rules, the "change in law" issue should become more clear and both the parties' interconnection agreements and BellSouth's SGAT can be appropriately amended. What is clear now, however, is that the wholesale elimination of BellSouth's obligations contained in its SGAT is not warranted

Therefore, CompSouth requests that the TRA enter an Order denying BellSouth's request to withdraw its SGAT and establishing an investigation into what changes to the SGAT are appropriate.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

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CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2004, a copy of the foregoing document was serviced on the parties of record, via US mail.

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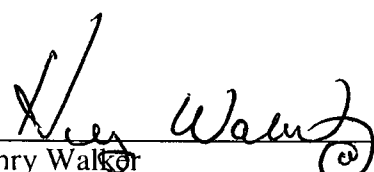
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